

§ 385.707

(2) Operating a vehicle placed out of service for violations of the Federal Motor Carrier Safety Regulations without taking the necessary corrective action.

(3) Being involved in, through action or omission, a hazardous materials reportable incident, as described under 49 CFR 171.15 or 171.16, within the United States involving—

(i) A highway route controlled quantity of certain radioactive materials (Class 7).

(ii) Any quantity of certain explosives (Class 1, Division 1.1, 1.2, or 1.3).

(iii) Any quantity of certain poison inhalation hazard materials (Zone A or B).

(4) Being involved in, through action or omission, two or more hazardous materials reportable incidents, as described under 49 CFR 171.15 or 171.16, occurring within the United States and involving any hazardous material not listed in paragraph (a)(3) of this section.

(5) Using a driver who tests positive for controlled substances or alcohol or who refuses to submit to required controlled substances or alcohol tests.

(6) Operating within the United States a commercial motor vehicle without the levels of financial responsibility required under part 387 of this subchapter.

(7) Having a driver or vehicle out-of-service rate of 50 percent or more based upon at least three inspections occurring within a consecutive 90-day period.

(b) Failure to respond to an Agency demand for a written response demonstrating corrective action within 30 days will result in the suspension of the carrier's new entrant registration until the required showing of corrective action is submitted to the FMCSA.

(c) A satisfactory response to a written demand for corrective action does not excuse a carrier from the requirement that it undergo a compliance review during the new entrant registration period.

§ 385.707 The compliance review.

(a) The criteria used in a compliance review to determine whether a non-North America-domiciled new entrant exercises the necessary basic safety

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management controls are specified in appendix B to this part.

(b) *Satisfactory Rating.* If FMCSA assigns a non-North America-domiciled carrier a Satisfactory rating following a compliance review conducted under this subpart, FMCSA will provide the carrier written notice as soon as practicable, but not later than 45 days after the completion of the compliance review. The carrier's registration will remain in provisional status and its on-highway performance will continue to be closely monitored for the remainder of the 18-month new entrant registration period.

(c) *Conditional Rating.* If FMCSA assigns a non-North America-domiciled carrier a Conditional rating following a compliance review conducted under this subpart, it will initiate a revocation proceeding in accordance with § 385.709 of this subpart. The carrier's new entrant registration will not be suspended prior to the conclusion of the revocation proceeding.

(d) *Unsatisfactory Rating.* If FMCSA assigns a non-North America-domiciled carrier an Unsatisfactory rating following a compliance review conducted under this subpart, it will initiate a suspension and revocation proceeding in accordance with § 385.709 of this subpart.

§ 385.709 Suspension and revocation of non-North America-domiciled carrier registration.

(a) If a carrier is assigned an "Unsatisfactory" safety rating following a compliance review conducted under this subpart, FMCSA will provide the carrier written notice, as soon as practicable, that its registration will be suspended effective 15 days from the service date of the notice unless the carrier demonstrates, within 10 days of the service date of the notice, that the compliance review contains material error.

(b) For purposes of this section, material error is a mistake or series of mistakes that resulted in an erroneous safety rating.

(c) If the carrier demonstrates that the compliance review contained material error, its new entrant registration will not be suspended. If the carrier fails to show a material error in the

compliance review, FMCSA will issue an Order:

(1) Suspending the carrier's new entrant registration and requiring it to immediately cease all further operations in the United States; and

(2) Notifying the carrier that its new entrant registration will be revoked unless it presents evidence of necessary corrective action within 30 days from the service date of the Order.

(d) If a carrier is assigned a "Conditional" rating following a compliance review conducted under this subpart, the provisions of paragraphs (a) through (c) of this section will apply, except that its new entrant registration will not be suspended under paragraph (c)(1) of this section.

(e) If a carrier subject to this subpart fails to provide the necessary documents for a compliance review upon reasonable request, or fails to submit evidence of the necessary corrective action as required by § 385.705 of this subpart, FMCSA will provide the carrier with written notice, as soon as practicable, that its new entrant registration will be suspended 15 days from the service date of the notice unless it provides all necessary documents or information. This suspension will remain in effect until the necessary documents or information is produced and:

(1) The carrier is rated Satisfactory after a compliance review; or

(2) FMCSA determines, following review of the carrier's response to a demand for corrective action under § 385.705, that the carrier has taken the necessary corrective action.

(f) If a carrier commits any of the actions specified in § 385.705(a) of this subpart after the removal of a suspension issued under this section, the suspension will be automatically reinstated. FMCSA will issue an Order requiring the carrier to cease further operations in the United States and demonstrate, within 15 days from the service date of the Order, that it did not commit the alleged action(s). If the carrier fails to demonstrate that it did not commit the action(s), FMCSA will issue an Order revoking its new entrant registration.

(g) If FMCSA receives credible evidence that a carrier has operated in

violation of a suspension order issued under this section, it will issue an Order requiring the carrier to show cause, within 10 days of the service date of the Order, why its new entrant registration should not be revoked. If the carrier fails to make the necessary showing, FMCSA will revoke its registration.

(h) If a non-North America-domiciled motor carrier operates a commercial motor vehicle in violation of a suspension or out-of-service order, it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), as adjusted by inflation, not to exceed amounts for each offense under part 386, Appendix B of this subchapter.

(i) Notwithstanding any provision of this subpart, a carrier subject to this subpart is also subject to the suspension and revocation provisions of 49 U.S.C. 13905 for repeated violations of DOT regulations governing its motor carrier operations.

§ 385.711 Administrative review.

(a) A non-North America-domiciled motor carrier may request FMCSA to conduct an administrative review if it believes FMCSA has committed an error in assigning a safety rating or suspending or revoking the carrier's new entrant registration under this subpart.

(b) The carrier must submit its request in writing, in English, to the Associate Administrator for Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington DC 20590.

(c) The carrier's request must explain the error it believes FMCSA committed in assigning the safety rating or suspending or revoking the carrier's new entrant registration and include any information or documents that support its argument.

(d) FMCSA will complete its administrative review no later than 10 days after the carrier submits its request for review. The Associate Administrator's decision will constitute the final Agency action.